

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
RAMESH “SUNNY” BALWANI,
Defendant.

Case No. [5:18-cr-00258-EJD-1](#)

**ORDER DENYING “MOTION FOR
NEW TRIAL UNDER FEDERAL RULE
OF CRIMINAL PROCEDURE 33 AND
FOR LEAVE TO PARTICIPATE AT
EVIDENTIARY HEARING”**

Re: Dkt. No. 1594

Defendant Ramesh “Sunny” Balwani has filed a “Motion For New Trial Under Federal Rule of Criminal Procedure 33 and for Leave to Participate at Evidentiary Hearing.” Dkt. No. 1594. Mr. Balwani seeks leave to examine Dr. Rosendorff at the evidentiary hearing scheduled for October 17, 2022 in Ms. Holmes’ case, and to submit post-hearing briefing on the same schedule set for Ms. Holmes’ related Motion for a New Trial, Dkt. No. 1574. The motion is DENIED.

The purpose of the October 17, 2022 evidentiary hearing is to explore the meaning of Dr. Rosendorff’s statements to Ms. Holmes’ partner, William Evans, and whether any government misconduct occurred in regards to Dr. Rosendorff’s testimony. Holmes’ Mot. at 11. Dr. Rosendorff’s statements to Mr. Evans related exclusively to his testimony during Ms. Holmes’ trial, not Mr. Balwani’s trial. Dr. Rosendorff allegedly told Mr. Evans, among other things: “(1) he tried to answer the questions honestly at Ms. Holmes’ trial, but the government tried to make everyone look bad; (2) the government made things seem worse than they were; (3) everyone at Theranos was working hard to do something good and meaningful; (4) he felt that he had done

Case No.: [5:18-cr-00258-EJD-1](#)

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EVIDENTIARY HEARING**

1 something wrong, apparently in connection with Ms. Holmes' trial; (5) he wanted to talk to Ms.
2 Holmes; (6) he thought a conversation with Ms. Holmes would be healing for both of them; (7)
3 both she and he were young at the time of the events; and (8) these concerns were weighing on
4 him to the point where he had difficulty sleeping." Holmes' Mot. at 1.

5 The government later submitted a declaration from Dr. Rosendorff where he stated in
6 pertinent part:

7 3. During my testimony at . . . Mr. Balwani's trial[], I answered every
8 question put to me completely, accurately, and truthfully to the best
9 of my ability. Nothing I have learned since giving my testimony has
10 changed by recollection of the events I witnessed during my time at
11 Theranos. I stand by my testimony at . . . Mr. Balwani's trial[] in
12 every respect.

13 4. The only instruction the government has given me in connection
14 with this case is to tell the truth about the events I witnessed. I have
15 no reason to believe that the government misrepresented or otherwise
16 created a misimpression about . . . Mr. Balwani's conduct at Theranos.

17 Dkt. No. 1587-1.

18 There is no basis for Mr. Balwani to examine Dr. Rosendorff at the scheduled evidentiary
19 hearing because (1) none of Dr. Rosendorff's statements to Mr. Evans pertained to Mr. Balwani's
20 trial; (2) Dr. Rosendorff affirmed the completeness, accuracy and truthfulness of his testimony at
21 Mr. Balwani's trial; (3) Dr. Rosendorff unequivocally stands by his testimony at Mr. Balwani's
22 trial; (4) the only instruction the government gave him was to tell the truth about the events he
23 witnessed; and (5) Dr. Rosendorff has no reason to believe that the government misrepresented or
24 otherwise created a misimpression about Mr. Balwani's conduct at Theranos.

25 Mr. Balwani's motion is accordingly DENIED.

26 **IT IS SO ORDERED.**

27 Dated: October 11, 2022



EDWARD J. DAVILA
United States District Judge

28 Case No.: [5:18-cr-00258-EJD-1](#)

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EVIDENTIARY HEARING